

Dear Sir or Madam:

These comments are submitted on behalf of the Medical Society of the State of New York Political Action Committee (MSSNYPAC).

We are writing to express our grave concerns regarding the application of the proposed amendments to the rules and regulations implementing the Telephone Consumer Protection Act of 1991 (CG Docket No. 02-278), as they apply to the functions of political organizations in general, and political action committees affiliated with membership and trade organizations, specifically.

It is our sincere belief that the applicability of the proposed regulations to political action committees has neither been conclusively determined, nor have the consequences of such an application been thoroughly determined. The proposed regulations, as they apply to facsimile message, do not mention or discuss political activity, either within or without a trade/membership organization. It is clear, within the context of the national do-not-call registry, that unsolicited telephone communications for political purposes are not captured within the ban. As stated, the proposed rules on facsimiles lack such clarity. In fact, a legal representative of the Federal Communications Commission (FCC) could not herself, in a roundtable discussion with members of the American Society of Association Executives on July 23, definitively state whether the proposed ban on unsolicited advertisement by facsimile to members of membership and trade organizations would apply to membership recruitment in such organizations' affiliated political action committees.

Moreover, the underpinning of facsimile ban in the Telephone Consumer Protection Act of 1991 was that material which constituted an "unsolicited advertisement" could not be sent without prior, written approval to accept such faxes. The Act defines (at 44 USC 227 (a) (4)) an unsolicited advertisement as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." Given the statutory definition, we argue strongly that the proposed regulations should not and cannot apply to political action committee activities.

First, political activity is not, by its very nature, "commercial". In fact, since *Buckley v. Valeo*, 424 US 1 (1976), the courts have held that the spending of money in connection with political campaigns is akin to speech and, therefore, enjoys the same constitutional protections as spoken words. Moreover, the courts have also allowed the regulation of *commercial* speech to a much greater degree than personal, i.e. political, speech, most recently in *Nike, inc. v. Mark Kasky*, 539 US ____ (2003). We believe that the proposed regulation is one that could, arguably, be applied to commercial speech, but not personal speech and, therefore, it cannot be applied to political activities.

Secondly, the political activity undertaken by political action committees (e.g. collecting and distributing financial donations for the purposes of influencing the outcome of elections) cannot be considered "property, goods, or services". The nature of campaign

and political activities does not involve the transfer of anything tangible, such as property, goods or services. To suggest that involvement in electoral campaigns is akin to directly buying, selling or transferring property, goods or services would make a mockery of our system of participatory democratic government. Moreover, the First Amendment to the Constitution guarantees the right of the people “to petition the government for a redress of grievances.” The proposed regulation, if applied to political activity, would run afoul of this constitutional guarantee.

In summary, we firmly hold that the proposed regulation cannot be specifically applied to the legal operation of a political action committee affiliated with a trade / membership organization, nor to political activity in general, because such activities are not commercial in nature, do not meet the statutory definition of an unsolicited advertisement and are constitutionally protected.

I thank you for considering these comments.

Darrin T. Ocke
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Medical Society of the State of New York